



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

ELP

Docket No. 5924-99

13 December 1999

[REDACTED]

Dear [REDACTED].

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 8 December 1999. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you reenlisted in the Navy on 8 October 1982 for four years as an AD2 (E-5). At the time of your reenlistment, you had completed four years of prior active service. The record reflects that you served without incident until 1 June 1983 when you received nonjudicial punishment (NJP) for a 25 day period of unauthorized absence (UA). Punishment imposed consisted of forfeitures of \$200 per month for two months, reduction in rate to AD3 (E-4), and 21 days of restriction.

On 6 June 1982, you were referred to the counseling and assistance center (CAAC) for evaluation due to the foregoing period of UA. The CAAC found you were psychologically dependent upon alcohol and considered you to be a practicing alcoholic. Your commanding officer was advised that you were uncooperative when interviewed and not motivated for assistance, as evidenced by your refusal to participate in an antabuse regimen. It was

noted that you had previously completed an inpatient alcohol abuse rehabilitation program in 1979. It was opined that with your current attitude, any attempt to modify your behavior would not be cost effective. CAAC recommended counseling by the command substance abuse coordinator, a dependency evaluation by a medical officer, and administrative separation.

You served without further incident until 5 September 1983 when you were convicted by civil authorities of disorderly intoxication, and fined \$66.50. The following day, you received NJP for four periods of UA totalling about 29 days. Punishment imposed consisted of forfeitures of \$300 per month for two months, reduction in rate to ADAN (E-3), and 24 days of restriction.

On 13 September 1983, you were counseled regarding your misconduct and warned that failure to take corrective action could result in discharge under other than honorable conditions. On the same day, you were notified that the command intended to recommend you for discharge under other than honorable conditions by reason of misconduct due to a pattern of misconduct as evidenced by five periods of UA. You were advised of your procedural rights, declined to consult with counsel, and waived your right to representation by counsel and an administrative discharge board (ADB).

On 15 September 1983, you were reported UA again and remained absent until your surrendered on board on 23 September 1983.

On 12 October 1983, the Commander, Naval Military Personnel Command directed the command to reprocess you because there was no evidence that you had violated the counseling/warning of 13 September 1983.

On 14 October 1983 you received your third NJP for the foregoing eight day period of UA. On the same day, you were again notified that you were being recommended for discharge under other than honorable conditions by reason of misconduct due to a pattern of misconduct. You were advised of your procedural rights and again waived those rights. Thereafter, the commanding officer recommended separation under other than honorable conditions. In his recommendation, he noted you blamed your multiple UAs on excessive drinking and said that the command had expended a great deal of effort in trying to help you overcome your problems. However, you refused CAAC treatment and were uncooperative and unmotivated to participate in the CAAC program. The CO stated that you had been counseled by your division officer on numerous occasions about your absences and drinking, but not once did you make use of the squadron's resources available to you.

In a message to CNMPC on 20 October 1983, you were declared a deserter. The message stated that you had been UA since 1300 on that date, and the facts and circumstances indicated that you intended to desert. The date you returned to the command is not shown in the record.

On 28 October 1983, you were re-notified at the direction of CNMPC of the command's intention to discharge you under other than honorable conditions. Again you were advised of your rights and again you waived your right to representation by counsel and presentation of your case to an ADB. On 13 November 1983, CNMPC finally directed discharge under other than honorable conditions by reason of misconduct due to a pattern of misconduct. A copy of the DD Form 214 issued on the date of your discharge is not on file in the record. You state in your application that you were discharged on 17 November 1983.

On 7 May 1999, the Naval Discharge Review Board (NDRB) denied your request for recharacterization of the discharge.

In its review of your application the Board carefully weighed all potentially mitigating factors such as your prior honorable service; letters of reference; and good post-service conduct, to include completing the basic emergency medical technician course and earning a bachelor's of science degree in applied science. The Board noted the issues you presented to the NDRB in May 1999 and your current contentions to the effect that one civil conviction for a misdemeanor does not constitute a pattern of misconduct, you do not recall refusing counseling or rehabilitation treatment, legal counseling provided was inadequate or after-the-fact, you were not notified of the pending discharge prior to processing, and you did not desert.

The Board concluded that the foregoing factors and contentions were insufficient to warrant recharacterization of your discharge given your record of three NJPs and a misdemeanor civil conviction. Certainly, a single civil conviction does not establish a pattern of misconduct but when coupled with three NJPs for six periods of UAs totalling 62 days, a definite pattern of misconduct exists. The Board noted that CNMPC could have ignored processing errors made by your command, but on three separate occasions during a period of less than two months you were afforded the opportunity to exercise your rights, and on each occasion you waived your right to an ADB. An ADB was your one opportunity to show why you should be retained or discharged under honorable conditions. While your post-service achievements are noteworthy, the Board did not believe they overcome the frequent misconduct during your second enlistment of only 13 months. The Board concluded that the other than honorable discharge for this period of service was proper and no change is

warranted. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER  
Executive Director

Copy to:  
The American Legion